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Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-163

In the Matter of

Amendment of Section 73.202(b) RM-8715  
Table of Allotments,  
FM Broadcast Stations.  
(Wilson Creek, Washington, and  
Pendleton, Oregon)

**NOTICE OF PROPOSED RULE MAKING  
AND ORDER TO SHOW CAUSE**

Adopted: October 20, 1995; Released: October 31, 1995

Comment Date: December 22, 1995

Reply Comment Date: January 8, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Wilson Creek Communications, LLC ("petitioner"), licensee of Station KVYF(FM), Channel 277C3, Wilson Creek, Washington, proposing the substitution of Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, and the modification of Station KVYF(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes substitution of Channel 279C1 for Channel 278C1 at Pendleton, Oregon, and the modification of Station KWHT(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration because the proposed upgrade could enable Station KVYF(FM) to expand its coverage area. An engineering analysis has determined that Channel 278C1 can be allotted at Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to the proposed allotment site for Channel 279B, Rock Creek, British Columbia.<sup>1</sup> Additionally, Channel 279C1 can be allotted to Pendleton, Oregon, in compliance with the Commission's minimum distance separation requirements at Station KWHT(FM)'s presently licensed site.<sup>2</sup> Since the Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

3. The petitioner's modification request at Wilson Creek is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the license for Station KVYF(FM) without entertaining competing expressions of interest in the use of Channel 278C1 at Wilson Creek, or requiring the petitioner to

demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KWHT(FM) at Pendleton, Oregon, as to why its license should not be modified to specify operation on Channel 279C1 in lieu of Channel 278C1.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KWHT(FM) for reasonable costs associated with moving to Channel 279C1.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Wilson Creek, Washington	277C3	278C1
Pendleton, Oregon	278C1, 299C1	279C1, 299C1

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Agpal Broadcasting, Inc., licensee of Station KWHT(FM), Pendleton, Oregon, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 279C1 as proposed herein instead of the present Channel 278C1.

7. Pursuant to Section 1.87 of the Commission's Rules, Agpal Broadcasting, Inc., may, not later than **December 22, 1995**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Agpal Broadcasting, Inc., to furnish additional information. If Agpal Broadcasting, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Agpal Broadcasting, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Agpal Broadcasting, Inc.  
P.O. Box 579  
Pendleton, Oregon 97801  
(Licensee of Station KWHT(FM))

<sup>1</sup> The coordinates for Channel 278C1 at Wilson Creek are North Latitude 47-24-49 and West Longitude 119-07-15.

<sup>2</sup> The coordinates for Channel 279C1 at Pendleton are North Latitude 45-47-51 and West Longitude 118-22-17.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **December 22, 1995**, and reply comments on or before **January 8, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Peter Tennenwald, Esq.  
 Irwin, Campbell & Tennenwald, P.C.  
 1320 18th Street, N.W., Suite 400  
 Washington, D.C. 20036-1811  
 (Counsel for Petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
 Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.